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Attorneys for Plaintiff
MMC Energy, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MMC ENERGY, INC.,	:	08 Civ 4353 (DAB)
Plaintiff,	:	
vs.	:	REPLY AFFIDAVIT OF
	:	BRIAN S. KAPLAN IN
	:	FURTHER SUPPORT OF
KARL W. MILLER,	:	<u>DEFAULT JUDGMENT</u>
Defendant.	:	
-----X		

STATE OF NEW YORK)
) : ss
COUNTY OF NEW YORK)

Brian S. Kaplan, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am a member of the firm Kasowitz, Benson, Torres & Friedman LLP, counsel for plaintiff MMC Energy, Inc. ("MMC") in the above-captioned matter, and am fully familiar with the facts and circumstances set forth herein.
2. I submit this affidavit pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in further support of plaintiff's application for the entry of a default judgment against defendant Karl W. Miller.

3. A copy of the Summons and Complaint was sent to Defendant's counsel, Thomas J. Hall of Chadbourne & Parke LLP, by hand delivery and email on May 8, 2008. After Mr. Hall refused to accept service on Mr. Miller's behalf, on June 4, 2008, counsel for MMC caused a copy of the Summons and Complaint to be left at 411 Bradley Creek Point Road, Wilmington, North Carolina, with Joe Hearne, described by the process-server as a co-resident of the Defendant and a person of suitable age and discretion who accepted service of same.

4. In his opposition papers, Mr. Miller states that he is a resident of Florida, and was so on June 4, 2008. Such statement contradicts the address listed by Mr. Miller in the proxy statement that he recently filed with the U.S. Securities and Exchange Commission on or about May 8, 2008, which lists Mr. Miller's business address as 411 Bradley Creek Point Road, Wilmington, North Carolina.

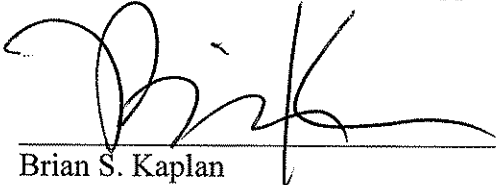
5. 411 Bradley Creek Point Road, Wilmington, North Carolina is also the last-known home address in the Company's records for Mr. Miller as well as the address that was provided to the Company's counsel by Mr. Miller and his counsel in connection with the preparation of his Separation Agreement with the Company.

6. Mr. Miller does not state in his opposition that he is not also a resident of North Carolina, or that he does not also maintain another residence at 411 Bradley Creek Point Road, Wilmington, North Carolina.


7. Mr. Miller also does not submit an affidavit from Joe Hearne, his father-in-law, or otherwise indicate Mr. Hearne's address. A "White Pages" and a "Google" internet search show 411 Bradley Creek Point Road, Wilmington, North Carolina, among the addresses listed for Mr. Hearne.

8. Lastly, Mr. Miller's opposition is internally inconsistent. If MMC's counsel's subsequent mailing of a courtesy copy to 411 Bradley Creek Point Road, Wilmington, North Carolina was sufficient to constitute service for purposes of N.Y. CPLR Section 308(2), then Miller is implicitly acknowledging that this was his "actual . . . dwelling place" or "usual place of abode," thus conceding that the initial service was valid as well under Rule 4(e)(2)(B) of the Federal Rules of Civil Procedure.

9. Because Mr. Miller failed to timely answer, move or otherwise respond to the Summons and Complaint, the entry of default by the Clerk of the Court was appropriate.


Brian S. Kaplan

Sworn to before me this
25th day of July, 2008.


Notary Public

MARY A. O'CONNELL
Notary Public, State of New York
No. 01OC6023427
Qualified in Queens County
Commission Expires April 19, 20 11